

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**HEALTHCARE MANAGEMENT
SOLUTIONS, INC.,**

Plaintiff,

VS.

**KEN HARTLE and
PHYSICIANS MEDICAL BILLING INC.,**

Defendants.

8:07CV05

ORDER

This matter is before the court on the plaintiff's response (Filing No. 22) to this court's June 13, 2007 show cause order (Filing No. 21). On June 13, 2007, the court granted the defendants' Motion to Compel Discovery (Filing No. 14). The court required the plaintiff to show cause why sanctions should not be granted for failing to adequately respond to the defendants' Requests for Production. Specifically, the defendants alleged that while the plaintiff initially objected to production, the plaintiff later agreed to the requested production, then provided only part of the relevant documents.

The plaintiff now states its initial objections are valid, but it provided discovery rendering the motion to compel moot. Additionally, the plaintiff states when told the production of documents was deficient, the plaintiff immediately supplemented production or provided information about why such production was not possible (non-existence of documents). The plaintiff contends the defendants were not prejudiced by the plaintiff's conduct. The defendants did not respond to the plaintiff's brief.

Although a party may not avoid sanctions merely by producing the documents after a motion to compel has been filed, the court finds the plaintiff's initial refusal and later failure to provide discovery was substantially justified, as required under Rule 37(a)(4), to preclude sanctions in this matter. Accordingly, no sanctions will be awarded to the defendants in connection with their motion to compel (Filing No. 14).

IT IS SO ORDERED.

Dated this 9th day of July, 2007.

BY THE COURT:

s/ Thomas D. Thalken
United States Magistrate Judge